

LAFAYETTE & KUMAGAI LLP
GARY T. LAFAYETTE (State Bar No. 088666)
SUSAN T. KUMAGAI (State Bar No. 127667)
REBECCA K. KIMURA (State Bar No. 220420)
100 Spear Street, Suite 600
San Francisco, California 94105
Telephone: (415) 357-4600
Facsimile: (415) 357-4605

Attorneys for Defendant
AT&T UMBRELLA BENEFIT PLAN NO. 1

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

L. DORETTA KERL,
Plaintiff,

vs.

AT&T UMBRELLA BENEFIT PLAN NO. 1,
Defendants.

Case No. C08-00970 EMC

**ANSWER OF DEFENDANT AT&T
UMBRELLA BENEFIT PLAN NO. 1
TO PLAINTIFF'S COMPLAINT
(ERISA)**

Complaint Filed: February 15, 2008

Defendant AT&T UMBRELLA BENEFIT PLAN NO. 1 ("defendant" or "the Plan")
hereby answers plaintiff L. Doretta Kerl's ("plaintiff") Complaint ("Complaint") as follows:

JURISDICTION

1. Answering paragraph 1 of the Complaint, defendant is without sufficient
knowledge to form a belief as to the truth of plaintiff's characterization of this action. Defendant
admits the Court has jurisdiction over plaintiff's claims under the Employment Retirement
Income Security Act ("ERISA"), 29 U.S.C. §1132(a)(1)(B). Except as so admitted, defendant
denies each and every other allegation.

VENUE

2. Answering paragraph 2 of the Complaint, defendant is without knowledge
sufficient to form a belief as to the truth of plaintiff's characterization of this action of the

1 allegations relying on the vague and ambiguous terms "events or omissions" and "administered."
 2 Defendant admits that venue in this District is proper and the Plan is governed by ERISA.
 3 Except as so admitted, defendant denies each and every other allegation.

4 INTRADISTRICT ASSIGNMENT

5 3. Answering paragraph 3 of the Complaint, defendant is without knowledge
 6 sufficient to form a belief as to the truth of the allegations relying on the vague and ambiguous
 7 terms "some of the plan administration" and "breaches" and plaintiff's argumentative and
 8 conclusory statements. Defendant admits the action is properly assigned to this Court. Except as
 9 so admitted, defendant denies each and every other allegation and specifically denies it breached
 10 any obligation owed to plaintiff.

11 PARTIES

12 4. Answering paragraph 4 of the Complaint, Defendant admits that the Pacific
 13 Telesis Group Comprehensive Disability Benefit Plan ("CDBP") is a component of the Plan and
 14 that plaintiff was a participant in the CDBP.

15 5. Answering paragraph 5 of the Complaint, defendant admits that at all relevant
 16 times the Plan was an employee welfare benefit plan within the meaning of ERISA, that the Plan
 17 administrator of the CDBP is AT&T Inc., that the CDBP provided, among other benefits, short
 18 term disability benefits to participating employees, including plaintiff while she was an employee
 19 of Pacific Bell Telephone Company ("Pacific Bell") and that plaintiff worked in Pacific Bell's
 20 San Ramon office. Except as so admitted, defendant denies each and every other allegation.

21 FACTS

22 6. Answering paragraph 6 of the Complaint, defendant admits that plaintiff was
 23 employed by Pacific Bell Telephone Company on or about January 14, 1982 to May 5, 2007, and
 24 that she worked in Contra Costa County, California. Except as so admitted, defendant denies
 25 each and every other allegation.

26 7. Answering paragraph 7 of the Complaint, defendant is without sufficient
 27 knowledge to form a belief as to the truth of plaintiff's argumentative and/or conclusory
 28 statements. Defendant admits that plaintiff was employed by Pacific Bell as a Service

1 Representative during the relevant time period to this action and that her job duties included,
 2 among other things, assisting customers with their accounts and orders. Except as so admitted,
 3 defendant denies each and every allegation.

4 8. Answering paragraph 8 of the Complaint, defendant is without knowledge
 5 sufficient to form a belief as to the truth of the allegations relying on the vague and ambiguous
 6 terms "began medical treatment" and "increasing levels of pain" and/or argumentative and/or
 7 conclusory statements. Defendant admits that plaintiff visited a health care provider in October
 8 2005, for degenerative arthritis of the left hip and right knee. Except as so admitted, defendant
 9 denies each and every other allegation.

10 9. Answering paragraph 9 of the complaint defendant is without knowledge
 11 sufficient to form a belief as to the truth of the allegations relying on the vague and ambiguous
 12 terms "symptoms," "progressing" and "disabling" and/or argumentative and/or conclusory
 13 statements. Defendant admits that in August 2006, plaintiff's physician indicated that plaintiff
 14 had problems walking due to pain, advised not working for four weeks and recommended weight
 15 loss. Except as so admitted, defendant denies each and every other allegation.

16 10. Answering paragraph 10 of the Complaint, defendant is without knowledge
 17 sufficient to form a belief as to the truth of the allegations relying on the vague and ambiguous
 18 terms "leaving work" and "applied for." Defendant admits plaintiff's claim for STD benefits was
 19 acknowledged by letter dated September 1, 2006.

20 11. Answering paragraph 11 of the Complaint, defendant lacks knowledge sufficient
 21 to form a belief as to the truth of plaintiff's argumentative, conclusory, incomplete and/or hearsay
 22 statements. Defendant admits that by letter dated October 2, 2006, Patricia Walker, Disability
 23 Specialist with the AT&T Integrated Disability Service Center ("IDSC") informed plaintiff that
 24 her request for short term disability benefits was denied based on a review of medical
 25 information provided by her physician and IDSC's physician's agreement that, among other
 26 things, "[s]ubjective pain without significant positive objective findings does not justify time off
 27 from work." Except as so admitted, defendant denies each and every other allegation.

LAFAYETTE & KUMAGAI LLP
ATTORNEYS AT LAW
100 SPEAR STREET, SUITE 600
SAN FRANCISCO, CALIFORNIA 94105
(415) 357-4600
FAX (415) 357-4605

12. Answering paragraph 12 of the Complaint defendant denies the truth of the material allegations contained therein.

13. Answering paragraph 13 of the Complaint, defendant admits the material allegations contained therein.

14. Answering paragraph 14 of the Complaint, defendant admits plaintiff stated she was filing an appeal of the denial of STD benefits because of her "current health issues" and discussed these issues in her appeal.

15. Answering paragraph 15 of the Complaint, defendant lacks knowledge sufficient to form a belief as to the truth of plaintiff's argumentative, conclusory, incomplete and/or hearsay statements. Defendant admits that plaintiff and her medical providers submitted material in support of plaintiff's appeal, including, but not limited to, material relating to "destructive process involving the superior and medial aspect of the femoral head with increased signal in the otherwise intact medial and inferior portion of femoral head," "mild to moderate osteoarthritic changes" and "deformed appearance to the left hip . . ."

16. Answering paragraph 16 of the Complaint, defendant lacks knowledge sufficient to form a belief as to the truth of plaintiff's argumentative, conclusory and/or hearsay statements and plaintiff's statements relying on the vague and ambiguous term "possible home."

17. Answering paragraph 17 of the Complaint, defendant is without sufficient knowledge to form a belief as to the truth of plaintiff's argumentative, conclusory, incomplete and/or hearsay statements and allegations relying on vague and ambiguous terms "conclusions," "further explanation," "extensive" and "rejected." Defendant admits that by letter dated December 29, 2006, signed by Joan Winston, Appeals Supervisor, AT&T Integrated Disability Service Center Quality Review Unit ("QRU") for Joyce Krouskoupf, Appeals Specialist, plaintiff was informed that the decision to deny plaintiff's claim for short term disability benefits was upheld by the QRU based on review by the QRU and independent physician advisers of all medical information and resulting indications including, but not limited to, the lack of observable medical findings and the lack of documentation that plaintiff's condition was so severe as to prevent her from performing her job duties as a Service Representative with or without

1 reasonable accommodations from September 1, 2006 to her return to work date. Except as so
2 admitted, defendant denies each and every other allegation.

3 18. Answering paragraph 18 of the Complaint, defendant is without sufficient
4 knowledge to form a belief as to the truth of plaintiff's argumentative, conclusory, incomplete
5 and/or hearsay statements. Defendant admits that in a December 19, 2006 letter, Dr. Michael
6 Chemell stated, among other things, that plaintiff had minimal documented degenerative changes
7 which would not be expected to cause a functional impairment, that she is documented as having
8 end stage arthritis of the left hip and both knees on a consistent basis dating back from at least 13
9 months and that the diagnoses would be expected to have no impact on her ability to carry out the
10 duties of her job as a service representative. Except as so admitted, defendant denies each and
11 every other allegation.

12 19. Answering paragraph 19 of the Complaint, defendant is without knowledge
13 sufficient to form a belief as to the truth of the allegations relating to discipline to which plaintiff
14 was subjected and/or discussions during attendance meetings. Further, defendant is without
15 knowledge sufficient to form a belief as to the truth of plaintiff's argumentative, conclusory
16 and/or hearsay statements and/or allegations relying on vague and ambiguous terms "prior to her
17 disability," "that time," "attendance problems" and "doctors' recommendations." Defendant
18 admits that plaintiff's hourly pay rate was approximately \$26.65 in 2007, that on or about
19 November 16, 2006, plaintiff provided information that she was "currently working on surgery to
20 improve [her] help" so that she can return to work and that plaintiff voluntarily retired on May 4,
21 2007. Except as so admitted, defendant denies each and every other allegation.

22 20. Answering paragraph 20 of the Complaint, defendant is without sufficient
23 knowledge to form a belief as to the truth of plaintiff's argumentative, conclusory, incomplete
24 and/or hearsay statements. Defendant admits that because of the denial of STD benefits, plaintiff
25 was placed on unpaid Company Initiated Leave of Absence, incurring 30 days credited service
26 and resulting in a change in plaintiff's net credited service.

27 21. Answering paragraph 21 of the Complaint, defendant denies each and every
28 allegation therein.

LAFAYETTE & KUMAGAI LLP
ATTORNEYS AT LAW
100 SPEAR STREET, SUITE 600
SAN FRANCISCO, CALIFORNIA 94105
(415) 357-4600
FAX (415) 357-4605

FIRST CLAIM FOR RELIEF

22. Answering paragraph 22 of the Complaint, defendant incorporates by reference its responses to paragraphs 1 through 21, herein, as if fully set forth herein.

23. Answering paragraph 23 of the Complaint, defendant is without sufficient knowledge to form a belief as to the truth of plaintiff's characterization of this action.

24. Answering paragraph 24 of the Complaint, defendant admits that as a Plan participant, plaintiff was eligible for STD benefits under the Plan if she so qualified. Defendant denies each and every other allegation.

FIRST AFFIRMATIVE DEFENSE

25. As a first separate and affirmative defense, defendant asserts that plaintiff fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

26. As a second separate and affirmative defense, defendant asserts that the Complaint, and/or each claim for relief contained therein, is barred in that plaintiff failed to exhaust the administrative and/or judicial remedies available under the CDBP.

THIRD AFFIRMATIVE DEFENSE

27. As a third separate and affirmative defense, defendant asserts that plaintiff is barred and precluded from relief, because plaintiff failed to properly mitigate the alleged damages, if any.

FOURTH AFFIRMATIVE DEFENSE

28. As a fourth separate and affirmative defense, defendant asserts that all actions it took would have been taken in any event based on after-acquired evidence, and that the Complaint is either entirely barred or the alleged damages should be reduced accordingly.

LAFAYETTE & KUMAGAI LLP
ATTORNEYS AT LAW
100 SPEAR STREET, SUITE 600
SAN FRANCISCO, CALIFORNIA 94105
(415) 357-4600
FAX (415) 357-4605

FIFTH AFFIRMATIVE DEFENSE

29. As a fifth separate and affirmative defense, defendant asserts that the Complaint, and/or each claim for relief contained therein, is barred in that plaintiff is not eligible for benefits under the terms and conditions of the CDBP.

SIXTH AFFIRMATIVE DEFENSE

30. As a sixth separate and affirmative defense, defendant asserts that any purported claim by plaintiff for benefits under the Plan is barred because all benefits under the terms of the CDBP have been provided and all payments due under the terms of the CDBP have been paid.

SEVENTH AFFIRMATIVE DEFENSE

31. As a seventh separate and affirmative defense, defendant asserts that the Complaint, and/or each claim for relief contained therein, is barred in whole or in part by any and all applicable statutes of limitations.

EIGHTH AFFIRMATIVE DEFENSE

32. As an eighth separate and affirmative defense, defendant asserts that the Complaint, and/or each claim for relief contained therein, is barred by plaintiff's failure to comply with internal deadlines set forth in the CDBP.

NINTH AFFIRMATIVE DEFENSE

33. As a ninth separate and affirmative defense, defendant asserts that the Complaint, and/or each claim for relief contained therein, is barred in whole or in part by the doctrine of laches.

TENTH AFFIRMATIVE DEFENSE

34. As a tenth separate and affirmative defense, defendant asserts that the Complaint, and/or each claim for relief contained therein, is barred in whole or in part by the doctrine of estoppel.

ELEVENTH AFFIRMATIVE DEFENSE

35. As an eleventh separate and affirmative defense, defendant asserts that the Complaint, and/or each claim for relief contained therein, is barred in whole or in part by the doctrine of waiver.

LAFAYETTE & KUMAGAI LLP
ATTORNEYS AT LAW
100 SPEAR STREET, SUITE 600
SAN FRANCISCO, CALIFORNIA 94105
(415) 357-4600
FAX (415) 357-4605

TWELFTH AFFIRMATIVE DEFENSE

36. As a twelfth separate and affirmative defense, defendant asserts that the Complaint, and/or each claim for relief contained therein, is barred in whole or in part by the doctrine of unclean hands.

THIRTEENTH AFFIRMATIVE DEFENSE

37. As a thirteenth separate and affirmative defense, defendant asserts that any injury to plaintiff was caused wholly or in part by plaintiff's conduct.

FOURTEENTH AFFIRMATIVE DEFENSE

38. As a fourteenth separate and affirmative defense, defendant asserts that no conduct by or attributable to defendant was the cause in fact or proximate cause of any injury allegedly suffered by plaintiff.

FIFTEENTH AFFIRMATIVE DEFENSE

39. As a fifteenth separate and affirmative defense, defendant asserts that plaintiff is barred from asserting the claims alleged to the extent the claims relied upon for relief are moot.

SIXTEENTH AFFIRMATIVE DEFENSE

40. As a sixteenth separate and affirmative defense, defendant asserts that plaintiff is barred from asserting the claims alleged to the extent plaintiff lacks standing.

SEVENTEENTH AFFIRMATIVE DEFENSE

41. As a seventeenth separate and affirmative defense, defendant asserts that any award of benefits to plaintiff should be offset by any other earnings, benefits and/or income received by plaintiff (including but not limited to state disability benefits, workers' compensation benefits and/or settlement monies, unemployment benefits, and/or benefits from the Social Security Administration or the State), and/or should be offset by any damages caused by plaintiff to defendant, including any unjust enrichment to plaintiff by virtue of fraud.

EIGHTEENTH AFFIRMATIVE DEFENSE

42. As an eighteenth separate and affirmative defense, defendant asserts that it is entitled to attorneys' fees pursuant to 29 U.S.C. §1132(g) and/or Rule 11(c)(2), Federal Rules of Civil Procedure.

NINETEENTH AFFIRMATIVE DEFENSE

43. As a nineteenth separate and affirmative defense, defendant asserts that its actions or statements were based on good, sufficient and legal cause, upon reasonable grounds for belief in their truth or justification, and were taken or said in good faith and without malice.

TWENTIETH AFFIRMATIVE DEFENSE

44. As a twentieth separate and affirmative defense, defendant asserts that if and to the extent defendant had obligations with respect to plaintiff's employment or the benefits related to that employment, performance was prevented or excused due to the conduct, acts and refusals to act on plaintiff's part.

TWENTY-FIRST AFFIRMATIVE DEFENSE

45. As a twenty-first separate and affirmative defense, defendant asserts that defendant's duties, if any, to plaintiff have been discharged by plaintiff's breach of the terms of her employment.

TWENTY-SECOND AFFIRMATIVE DEFENSE

46. As a twenty-second separate and affirmative defense, defendant asserts that plaintiff has failed to state facts sufficient to form a basis for awarding attorneys' fees.

TWENTY-THIRD AFFIRMATIVE DEFENSE

47. As a twenty-third separate and affirmative defense, defendant asserts that it and its agents at all relevant times acted and conducted themselves as would a prudent person familiar with such matters.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

48. As a twenty-fourth separate and affirmative defense, defendant asserts that it and its agents at all relevant times acted and conducted themselves in accordance with the documents and instruments governing the CDBP, insofar as such documents and instruments were and are consistent with the provisions of ERISA.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

49. As a twenty-fifth separate and affirmative defense, defendant asserts that it and its agents at all relevant times acted and conducted themselves solely in the interest of the participants and beneficiaries of the CDBP.

WHEREFORE, defendant prays for Judgment as follows:

1. That plaintiff take nothing by her Complaint; and
2. That judgment be entered in favor of defendant, and against plaintiff, on each claim contained in the Complaint; and
3. That the Complaint be dismissed in its entirety, with prejudice; and
4. That defendant be awarded its costs of suit incurred herein, and
5. That defendant be awarded its reasonable attorneys' fees; and
6. For such other and further relief as this Court may deem just and proper.

Dated: April 28, 2008

LAFAYETTE & KUMAGAI LLP

/s/ Susan T. Kumagai

SUSAN T. KUMAGAI

Attorneys for Defendant

AT&T UMBRELLA BENEFIT PLAN NO. 1

CERTIFICATE OF SERVICE

I certify that a copy of this document was served electronically on April 28, 2008 on counsel of record in compliance with Federal Rule 5, Local Rule 5.6 and General Order 45, by use of the Court's ECF system.

/s/ Susan T. Kumagai

SUSAN T. KUMAGAI

N:\Documents\ATT\Kerl\PIlgs\Answer doc